



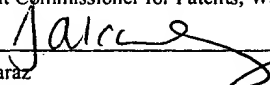
PATENT
Docket No. 220002057125
Client Reference 94-161-9

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

Express Mail Label No.: EV 064 641 863 US

Date of Deposit: February 25, 2002

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.


Tamara Alcaraz

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF PETITIONS
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In the application of:

H. Kirk HAMMOND et al.

Serial No.: 09/847,936

Filing Date: May 3, 2001

For: TECHNIQUES AND COMPOSITIONS
FOR TREATING CARDIOVASCULAR
DISEASE BY *IN VIVO* GENE
DELIVERY

Examiner: To Be Assigned

Group Art Unit: 1646

**PETITION UNDER 37 C.F.R. §1.47(a) TO FILE ON BEHALF OF
INVENTOR WHO REFUSES TO EXECUTE APPLICATION**

Box Missing Parts
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Joint inventors Wolfgang DILLMANN and H. Kirk HAMMOND, in order to preserve their rights and avoid irreparable damage thereto, hereby petition the Commissioner, under the provisions of 37 CFR §1.47(a), to complete this application on behalf of themselves and fellow joint inventor Frank J. GIORDANO, who refuses to join in the application.

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pa-669106

In support of this petition the following are provided:


1. Executed declarations, in accordance with 37 CFR 1.47(a) and MPEP 409.03(a)(A), of the two signing inventors, Wolfgang DILLMANN and H. Kirk HAMMOND;
2. A Declaration of Facts executed by Catherine M. Polizzi, providing the pertinent facts demonstrating *bona fide* attempts to secure Frank J. GIORDANO's execution of the application papers and his refusal to provide such.
3. The last known business address of Frank J. GIORDANO is:
Yale University, School of Medicine, Boyer Center for Molecular Medicine,
Room 336C, 295 Congress Ave., New Haven, Connecticut 06510.
The last known home address of Frank J. GIORDANO is:
412 Bartlett Drive, Madison, Connecticut 06443
4. A fee transmittal (Form PTO/SB/17), authorizing the petition filing fee required under 37 C.F.R. 1.17(i) is submitted herewith. The Commissioner is hereby authorized to charge any additional fees which may be required by this paper or credit any overpayment to Deposit Account No. 03-1592.

The enclosed papers are believed to be in compliance with 37 C.F.R. 1.47(a).

Petitioners request the Commissioner to grant this petition and to perfect the filing of this application by acceptance of the accompanying documents.

Respectfully submitted,

Dated: February 25, 2002

By: 
Catherine M. Polizzi
Registration No. 40,130
Morrison & Foerster LLP
755 Page Mill Road
Palo Alto, California 94304-1018
Telephone: (650) 813-5651
Facsimile: (650) 494-0792



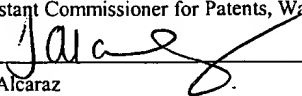
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**DECLARATION OF FACTS IN SUPPORT OF FILING ON BEHALF OF NAMED
INVENTORS (37 C.F.R. §1.47)**

Box Missing Parts
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This declaration is made as to the facts that are relied upon to establish the *bona fide* and diligent effort made to secure the execution of the inventor Frank J. Giordano's declaration for the above-referenced pending U.S. patent application.

I. IDENTIFICATION OF PERSON MAKING THIS DECLARATION OF FACTS

1. Catherine M. Polizzi, Ph.D., J.D., Morrison & Foerster LLP, 755 Page Mill Road, Palo Alto, California 94304-1018, attorney of record in this matter.
2. Morrison & Foerster, LLP, a law firm of which I am a partner, has been attorney of record in this matter and related prior U.S. patent applications, including without limitation, USSN 08/485,472, filed June 7, 1995, now USPN 5,792,453; USSN 08/722,271, filed February 27, 1996, now USPN 6,100,242; USSN 09/132,167, filed August 10, 1998, now USPN 6,174,871, hereinafter, USPN 5,792,453, USPN 6,100,242 and USPN 6,174,871, respectively.

II. BACKGROUND ON INVENTOR GIORDANO'S REPEATED REFUSALS TO PARTICIPATE IN THIS AND RELATED PATENT APPLICATIONS

1. The presently pending application claims priority and/or is related to the following U.S. Patents: USPN 5,792,453, USPN 6,100,242 and USPN 6,174,871. In each of these cases, as well as other related applications filed both in the United States and internationally, Dr. Frank Giordano has consistently refused to execute any documents necessary or related to the filing and/or prosecution of the corresponding applications.
2. Attached hereto are copies of the Rule 1.47(a) petition and supporting documents filed in USPN 5,792,453 (Exhibit A) and in USPN 6,100,242 (Exhibit B). Also attached hereto are copies of the Decisions According Status Under 37 CFR 1.47(a) received in USPN 5,792,453 (Exhibit C) and in USPN 6,100,242 (Exhibit D). A copy of Exhibit D was submitted during prosecution of USPN 6,174,871 to maintain 37 CFR 1.47(a) status in that matter as a continuation application of USPN 5,792,453.

III. DETAILS OF REFUSAL OF INVENTOR GIORDANO TO SIGN PAPERS RELATIVE TO PRESENTLY PENDING APPLICATION AND EFFORTS TO OBTAIN INVENTOR GIORDANO'S SIGNATURES

1. On February 5, 2002, an assignment was sent to Dr. Giordano at his last known business address: Yale University, School of Medicine, Boyer Center for Molecular Medicine, Room 336C, 295 Congress Ave., New Haven, Connecticut 06510, via Federal Express including a postage-paid, return-addressed Federal Express envelope and instructions to complete and return the enclosed document as soon as possible. The confirmation receipt for the Federal Express envelope (tracking number 7902 9903 0480) indicates that the package was received at the proper address. A copy of the confirmation receipt is attached hereto as Exhibit E. To date no response has been received from Dr. Giordano.

2. Also on February 5, 2002, an e-mail was sent to Dr. Giordano (at *frank.giordano@yale.edu*) requesting confirmation of his receipt of the Federal Express package. To date, no response to that e-mail has been received from Dr. Giordano.

3. On February 11, 2002, a second Federal Express package containing an assignment, a declaration, a postage-paid, return-addressed Federal Express envelope and instructions requesting execution and prompt return of the documents was sent. The confirmation receipt for this second Federal Express envelope (tracking number 7927 0169 9800) indicates that the package was received. A copy of the confirmation receipt is attached hereto as Exhibit F. To date no response has been received from Dr. Giordano.

4. On February 20, 2002, a voicemail message was left for Dr. Giordano, at his work number (203-785-7631), asking that he please confirm receipt of the packages and inquiring whether he intended to execute and return the documents. To date, he has not responded to this voicemail message.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: February 25, 2002

A handwritten signature in cursive script, reading "Catherine M. Polizzi", written in black ink. The signature is fluid and stylized, with a long horizontal flourish extending from the end.

Catherine Polizzi